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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 587

SAMUEL R. TOUCEY,

Petitioner,

vs.

NEW YORK LIFE INSURANCE COMPANY,
A CORPORATION.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

PETITIONER'S REPLY BRIEF.

SAMUEL R. TOUCEY,
Pro Se.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 587

SAMUEL R. TOUCEY,

Petitioner,

vs.

NEW YORK LIFE INSURANCE CO.,

Respondent.

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THERETO.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Supreme Court docketed above writ of certiorari November 20th, 1940, appellant obtained service on respondent with copy November 30th, 1940, and on December 7th, 1940, respondent obtained service on appellant with copy of "BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI".

Your petitioner, Samuel R. Toucey, respectfully prays to the Honorable Supreme Court for permission to answer respondent as follows:

Respondent on page 2, clause 2 of this brief charges to this Court "The application does not conform to Rule

#38 of the Revised Rules of this Court adopted February 13th, 1938", and on page 5, clause 2 of same brief again repeats same charge and quotes excerpt of rule 38 and quotes excerpt of paragraph 5.

Petitioner quotes Rule #38, clause 2 as referred to—quote

> "The petition shall contain only a summary of short statements of matter involved and reasons relied on for allowance of writ. A supporting brief may be included in petition, but whether so included or presented separately it must be direct, concise and in conformity with rules 26 and 27. A failure to comply with these requirements will be sufficient reason for denying petition".

Continued, Rule #38, clause 5—quote

> "A review of writ is not a matter of right, but good sound judicial discretion, and 'shall be granted only where there are special and important reasons therefor'," then illustrates examples A-B-C:

Petitioner believes his petition for writ of certiorari submitted (thus criticised) fully complied with the letter of Rule #38 in all respects, together with other Supreme Court laws also governing the compilation of writ of certiorari, appropriately indexing writ and classifying pages #17 to #53 of writ as intended by governing Supreme Court laws and including Rule #38.

With due regard for brevity, direct and concise statements, the colossal frauds perpetuated (and deliberately so) upon Petitioner by defendant in years 1923, 1924 and 1934 involving New York Life Insurance Policy No. 8 611 895 and its component parts (of which there are several) some admitted to evidence at federal court trial (1936) and to which petitioner testified, for federal court's final decree to destroy this policy and its component parts in the name

of the "law" does present the necessity (Rule 38, paragraph 5) for petitioner to put before this Honorable Court "where there are special and important reasons therefor":

Respondent's criticism is, therefore, in error and not rendered advisedly.

Respondent's brief (page 5, paragraph 2) states—quote

> "The first 29 pages of the petition are a series of incoherencies and do not relate to anything in the record on appeal or to any possible ground for certiorari".

Petitioner states that on page #17 of petition for writ of certiorari reference is made to Supreme Court order entered by Mr. Justice Douglas; and on page #55 reference is made to order entered by Mr. Justice Reed of Supreme Court; and on page #1 of writ New York Life policy No. 8 611 895 and some of its component parts appear, page #3 excerpt of decision rendered by federal court thereon, etc.

If these few facts are true, as they are, scant consideration should be given to the charge "the first 29 pages of writ are a series of incoherencies and do not relate to anything, etc.".

Respondent admits, however, petitioner's writ of certiorari commences with page #58.

Petitioner frankly states to this Honorable Court if all of the pages of his writ of certiorari (87) were to be destroyed and page #58 preserved it is the only argument necessary for the Supreme Court of the United States to accept the petition for writ of certiorari and take jurisdiction.

The federal court, when entering injunctions stopping a Missouri State Court jury trial "overruled" the Supreme Court of the United States law with petition for suit in equity (fraud—1934) before federal court only for trial to determine as the action was clearly *in personam*.

Petitioner refers the court to page #62 of writ:

> If the issue in this suit in equity had involved the issue of policy reinstatement due to cancellation on the charge of fraud, back premiums to be paid by policy holder with interest, surely a federal court would not consume over three days to try policy holder to determine if he was disabled under policy disability clause.
>
> The federal court had no more legal right to do so with petitioner in above entitled cause in suit in equity with the one issue to reinstate policy due to fraud.

The Circuit Court of Appeals, Eighth Circuit, likewise "overruled" Supreme Court law in not correcting federal court on appeal.

Rule #38, clause "B" clearly calls for the exercise of Supreme Court of the United States power of supervision on this petition for writ of certiorari.

A colossal deceit was practiced on both these lower courts (sitting as a three judge federal court) by some 137 different insurance companies at about the same time respondent deceived federal court also on above entitled cause.

Not a clear, concise and applicable precedent case has been put forward by respondent to justify federal court injunctions entered, much less court's final decree which, if executed in the name of the law, destroys New York Life policy No. 8 611 895 containing abundant written proof why and how this respondent deceived petitioner in deliberate perpetrated efforts over a long period; and the federal court decision was in error on the document itself (with two component parts thereof) before the court as evidence, petitioner testifying to such fraud.

On the contrary, petitioner's precedent cases (of which there are several) clearly show federal court had no legal right to enter its injunctions, nor the Circuit Court of Appeals to concur therein.

Respondent's opposition to writ here is apparently based on the charge "The first 29 pages of petition by petitioner are a series of incoherencies and do not relate to anything, etc.", together with the injected word "scandalous" and all it implies, lacking any mention of proof to substantiate.

Petitioner's answer to that is, an Honored Supreme Court Justice of the Supreme Court of the United States who rendered a court decision while serving in the State of New York and not in favor of this respondent's corporation, but this Honored Jurist was, I consider, "SCANDALIZED" and nationally so and by what was considered privileged groups before the year 1916. A Goliath Corporation such as my corporation with three billions of dollars (some sixty thousand dollars of it my hard earned money) should not resort to injecting the word "SCANDALOUS" in its brief discussed here and not be prepared to prove it. Your petitioner's conviction is he was selected as a victim to restore into the state of Missouri the exploitation of its citizens and in the name of the law further prevented by Missouri state courts with the adoption of Missouri state established law on disability.

Page #58 and page #83 of writ are not charged to be wrongfully phrased by respondent. On page #83 appears written opinion by federal court when entering injunction stopping state court jury trial. By such written opinion the Honorable Federal Court itself (second paragraph clause one) states that if its decision (rendered November 23, 1936) had been appealed that the higher court "*might well have disagreed with our Finding of Fact Number* 1 *and nevertheless affirmed the decree of Finding of Fact Number* 2". Fact No. 1 in petition of suit in equity was fraud, year 1934.

Finding of Fact number two was that part of Federal court's decision in disagreement with Missouri State estab-

lished law on insurance policy disability clause (the gold mine for dishonest insurance) and the Federal court never had a legal right to adjudicate that issue in the petition for suit in equity transferred from State to Federal court for trial. Here is a written admission by the Federal court itself petitioner could not have effectively appealed decision rendered November 23, 1936, and because the Federal court had disagreed by decision with Missouri State established law on disability: Then the same Federal court enters injunction (March, 1938) stopping State court jury trial of same case, and on August 14th, 1939, enters permanent injunction with court's final decree. Destroy policy in the name of the law. Such cannot be claimed to be a "fair" trial even if Supreme Court law permitted Federal court injunctions, but Supreme Court law clearly does not so permit and to so permit the Supreme Court would be compelled to change its own law first with this writ of certiorari before Supreme Court or some other similar action. The Federal court never had a legal right to rule on the issue of disability in petition of suit in equity before it carried there from State court.

The closing word in Respondent's "Brief In Opposition to Petition for Writ of Certiorari" is "SCANDALOUS".

Petitioner prays the Supreme Court appreciates writ of certiorari only states the facts for which there is ample and full corroboration by the written record and this the Honorable Court must have. Petitioner, however, thus invited by Respondent will give his interpretation of the word "SCANDALOUS".

In the year 1916 the much Honored Jurist by lovers of our Democracy was appointed by the President to the Supreme Court of the United States, Mr. Justice Brandeis. While Justice Brandeis was on the bench in the State of New York he conducted trials and rendered decisions, and one in par-

ticular petitioner recalls not in favor of Respondent's Corporation.

It is a nationally accepted fact one or more groups "scandalized" this appointment by the President of the United States of Justice Brandeis.

However, Justice Brandeis did remain on the Supreme Court of the United States when that august body and by majority rule rendered Supreme Court of United States decision—"No Federal court at any time had a right to disagree with state established law on disability", in the year 1938.

Petitioner in petition for writ of certiorari names and points to actual documents in his possession still, as well as documents in possession of a third party. There exists a document in possession of the Veterans Administration (and not mentioned in writ of certiorari or in any of petitioner's petitions including this petition) which definitely proves a most "scandalous" attempt by respondent to obtain Federal court testimony tending to support a Federal court decision in disagreement with state established law, but respondent's attempt failed miserably. Petitioner had full opportunity to outline all this in the fullest detail in petition for writ of certiorari but believed page #58 and page #83 of writ, clearly within the certified record and so accepted by Respondent, more than sufficient to hope for Supreme Court favorable action. It is clearly a "disdain" attempt by Respondent to clarify this brief In Opposition to writ of certiorari with the word "SCANDALOUS" without mentioning any supporting facts to justify any such inference, and I now challenge Respondent here or anywhere to undertake to do so.

Respondent's opening argument at federal court trial carried the charge petitioner came into court with "unclean hands"; and again respondent's opening charge to encour-

age the court's injection of injunctions was—petitioner had been discourteous to the court for his audacity to undertake to try his suit against respondent in his own State court and before a jury. Undoubtedly the injection of the word "SCANDALOUS" at the outset of Supreme Court litigation carries the hope for similar success to defeat justice.

Petitioner has stated facts, not scandal in petition for writ of certiorari and prays the Supreme Court will accept writ, take jurisdiction and overrule the lower courts so that the above entitled cause can obtain a "fair" trial and then let the decision, and before a jury, be as it may.

MAJOR S. R. TOUCEY,
Petitioner.
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